Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MEGHAN BETTWIESER A/K/A THIEL
Petitioner,

v.

STATE OF IDAHO
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF IDAHO

PETITION FOR A WRIT OF CERTIORARI

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MEGHAN BETTWIESER A/K/A THIEL
Petitioner,

v.

STATE OF IDAHO
Respondent,

MOTION FOR LEAVE TO FILE

The petitioner Meghan Bettwieser a/k/a Thiel requests leave of the court to file the accompanying PETITION FOR A WRIT OF CERTIORARI. Bettwieser has submitted the required materials with service and the docket fee as required by the Rules of the Supreme Court of the United States of America, and cites this courts jurisdiction in the Petition for review.

Respectfully submitted

Meghan Thiel

Meghan Bettwieser Thiel
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DECLARATION OF SERVICE

I declare under penalty of perjury that the appropriate number of copies of the MOTION FOR LEAVE TO FILE and PETITION FOR A WRIT OF CERTIORARI was served by prepaid first class mail on the 24th day of August, 2007 to the following:

Governor - State of Idaho
Butch Otter
and
The Attorney General
State of Idaho
Laurence Wasden
State House
Boise, Idaho 83720

Meghan Thiel
MEGHAN THIEL

QUESTIONS PRESENTED

1.

Whether \the rulings from the circumstances and proceedings in the trial court and appellant courts of the State of Idaho violate the U.S. constitutional provisions of the 5th and 14th amendments concerning fairness, due process, equal protection and enforcing laws that abridge the privileges of it's citizen and the 6th amendment which enables the defendant to confront his accuser .

2.

Whether a parent has a constitutional claim on a child as a minor after the child reaches the age of majority if the child consents to allow that claim and the parent accepts the responsibility?

3.

Whether petitioners constitutional due process rights were violated in the infraction proceedings proceedings? And are infraction civil or criminal or both for statutory claim to lay representation?

PARTIES TO THE PROCEEDINGS

Petitioner is Meghan Bettwieser A/K/A Thiel, pro-se citizen of the United State of America. The Respondent is the State of Idaho, Lawrence Wasden, Attorney General.

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PETITION FOR WRIT OF CERTIORAI TO THE COURT OF APPEALS, STATE OF IDAHO

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pro-se petitioner, Meghan Thiel, here after referred to as Meghan Bettwieser or Bettwieser, respectfully requests that the court grant a writ of certiorari to review the opinion of the Court of Appeals of the State of Idaho with subsequent denials of rehearing and review. Bettwieser appeals to the Supreme Court as trustees of the ordinary individual and to the individual fairness of equity and justice of the particular circumstance of this case.

OPINION BELOW

The Court of Appeals of the State of Idaho, a 3 justice court, issued an opinion from the appeal of the petitioner from the proceedings of the trial court, on September 7, 2006. State v. Bettwieser 149 P.3d 857.(Ct. App. 2006)

The same court denied rehearing on October 7, 2006. Subsequently the Supreme Court for the State of Idaho denied review on January 22, 2007. Appendix's attached as 1-3. The court order disallowing representation of Martin. Appendix 4

JURISDICTION

The Supreme Court of the State of Idaho denied review of the opinion of the Court of Appeals for the State of Idaho and was entered on January 22, 2007.

The Court has jurisdiction to review the decisions of the highest courts of the State of Idaho pursuant to 28 U.S.C Sec. 1254(1), 1257 and Rule 13.3 of the Supreme Court Rules of the United States.

CONSTITUTIONAL AND STATUTORY PROVISONS INVOLVLED

This case involves questions of the !4th Amendment to the Constitution of the United

Stating in part;

> " No state [shall] make or [enforce] any law which [abridge] the privileges or immunities of the citizens of the United States; nor [shall] any state deprive persons life liberty, or property, without due process or law; nor deny to any person within it's jurisdiction the equal protection of the laws."

Also the 5th Amendment which reads in part;

" nor be deprived of life liberty or property, without due process or law;"

And the 6th Amendment which reads in part:

"to be confronted with the witness against him:; to have compulsory process for obtaining witnesses in his favor.

The statutory provisions involved are Idaho Code 3-104 which reads;

" If any person shall practice law or hold himself out as qualified to practice law in this state without having been

admitted to practice therein by the Supreme Court and without having paid all license fees now or hereafter prescribed by law for the practice of law he is guilty of contempt both in the Supreme court and the district court for the district in which he shall so practice or hold himself out as qualified to practice. Provided, that any person may appear and act in a magistrate's division of a district court as a representative of any party to a proceeding therein so long as the claim does not total more than $300, and so long as he or his employer has no pecuniary interest in the outcome of the litigation and that he do so without making a charge or collecting a fee therefore."

Also the statute of Idaho Code 49-110(5) and 18-111 which states:

" Infraction means a civil public offense, not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or right to court-appointed counsel, and which is punishable by only a penalty not exceeding one hundred dollars ($100) and no imprisonment"

STATEMENT OF CASE

1. Course of the proceedings;

Bettwieser was cited for following to close under Idaho Code 49-638, an infraction under Idaho law, on December 22, 2003. The citation was timely sent to the clerks office to satisfy the summons for appearance which denied the offense. The court scheduled a trial for March 5, 2004 of which Bettwieser did not know of until she called the court on March 3, 2004. Bettwieser could not attend on March 5, 2004

Bettwieser gave her father (Martin) a power of attorney to appear for her and act in her behalf at the trial. It was presented to the presiding judge at the trial. The state never objected. State's witness, the accusing officer, was not present for the trial. Without a request by the parties the court continued the trial until April 5, 2004.

The state motioned the court, again for a continuance of the trial ,on March 12, 2004, because f the unavailability of state's witness, and the trial was reset again to April 19,2004.

On March 22, 2004 a motion to dismiss with affidavit and a renewed Power of Attorney were filed and served by Bettwieser. The State never objected but instead on March 30, 2004 the state filed another motion for continuance of the trial for the unavailability of State's witness of which the court reset the trial again to May 14, 2004.

Bettwieser filed a request for discovery on April 6, 2003 of which in part was for an informal deposition of the allegedly unavailable officer to answer some interrogatories, of which under Idaho Criminal Rule 16(e) the State has 14 days to file and serve a response or objection, and if not it constitutes a waiver of any objection. Idaho Criminal Rule 16(e)(2). The state did not timely file and serve a response and Bettwieser signed and filed a motion for sanctions which was served on the State. The court set the motion for hearing for May 13, 2004.

At hearing my father appeared for me and the State conceded it did not file or serve a timely discovery response. The court inquired if Martin was an attorney, of which he said he was not. The court proceeded and ordered the State to respond by producing the material sought or object. The

court did not order sanctions but compelled the State to respond or object. The court then reset the trial on it's own volition for Aug. 6, 2004.

The state filed an [untimely] response to the courts order of the discovery request, as an objection to that request. Bettwieser filed another motion to dismiss as a sanction for an untimely response to the courts order.

The State then filed a motion for contempt to "stop Martin's [unauthorized] practice of law by means of this contempt motion." The court set a hearing for July 28, 2004 but didn't specify for what it was for and did not require Bettwieser to be there.

As before Martin appeared in Bettwieser's behalf and the court accepted his appearance and allowed his argument and heard argument on the contempt by both sides The court did not find Martin in contempt but sanctioned us anyway by not allowing him to represent me any more and by striking all the documents. The court left the trial set for August 6, 2004, a week after the contempt hearing.

Through Bettwieser's objections before the trial the court found no prejudice and proceeds with the trial and Bettwieser appears for the trial alone. The State's only witness and evidence was the person that Bettwiser rear ended in the traffic accident, who also rear ended someone and was cited also for following to close. The citing officer was not present at the trial. The court denied the motion to dismiss and Bettwieser was found guilty of the offence and the penalty of $53.00 was imposed. Bettwieser timely appealed to the district court, a single senior judge and then to the Supreme Court of the State of Idaho, of which the case

was assigned to the Court of Appeals, a 3 justice quorum in the appeals process. A timely petition for rehearing was filed and denied and a timely petition for review was filed and denied with the Idaho Supreme Court, a 5 justice quorum.

REASONS FOR GRANTING THE PETITION

By granting review of the petition the Supreme Court would be addressing the quasi nature of the many quasi-suspect issues involved and the relationship of the constitutionality of that quasi status. The court would also be able to correct the Idaho States Courts conflicting interpretation or misinterpretation of its laws and case history. By being left un-addressed and uncorrected it would have a substantial future effect of justice and treatment of pro-se individuals and how parental relationships are to be viewed.

With review the Supreme Court can strengthen the family as the U.S. Constitution intended, by not allowing the States to erode that status by enacting and or enforcing laws that abridge the families.

Quasi issues:

(a). There is the quasi status of the infraction it self I.C.18-111 and the use, misuse or non-use or allowance of specific procedures for a quasi action.

Idaho Code 18-111 has defined an infraction as:

> " a civil public offense not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or a right to court appointed counsel," and can only recover a penalty not to exceed One hundred dollars ($100)."

It is obvious from the language of the statute that the legislature intended this to be a [civil] matter and not a criminal one. All the constitutional guarantees have been eliminated. The right to court appointed counsel, no trial by jury and in this case also the right to due process or a reasonable expectation that the rules and statues would be utilized for an infraction, as they should for a quasi proceeding. (appellant briefs and cited in Other Issues) Blacks Law Dictionary definition of Public tort; civil offense, criminal punishment.

In an infraction the state makes a claim of injury to the offense as a matter of law and seeks a penaly but can only recover for money in the amount not exceeding $100.00. There is no other claim the State can make, not for parole, imprisonment, or restitution or discretionary amount. Civil suits make claim for injury as a matter of law and seeks compensation and punishments in the form of punitive damages , which can be for any amount.

The Idaho Supreme Court has ruled that infractions are quasi criminal, but the state courts have also ruled that the quasi criminal issues are also sui-generis so "both civil and criminal rules apply" State v. Delzene 120 Idaho 473.

Because of the quasi nature of an infraction the courts are not allowing a defendant's full right to due process of law or and are so laxed in applying and or enforcing the rules and statutes because of it's quasi status that the defendants can't defend the alleged claim of the infraction.

Many members of the Idaho legislature foresaw this; James Von Schimidt vociferously opposed the bill, stating

that it is "ripe for constitutional violations." Orson Merrill spoke in opposition to the legislation. Vern Shaw opposed the bill because a child involved in a traffic accident could be classified as a criminal. Homer Clough was opposed to the bill. Dian Mannion was opposed because it is a direct violation of a citizens' rights. Gordon Dempsey spoke in opposition citing observation of the Oregon infractions and the state is opening the door to take away citizen's rights. Pearl Kuglar opposed the legislation as taking away her rights and concerned whether they are civil or criminal. Judiciary, Rules and Adminisration Committee Meeting March 3, 1982.

Tom Cushman and Mr. Bianchi commented that the intent of the legislation was to decriminalize the traffic infraction. Judiciary, Rules and administration Committee Meeting March 5, 1882.

It appears now that the state is calling violators of traffic infractions as criminals.

"State law may provide relief beyond demands of Federal Due Process, but under no circumstances may it confine petitioners to a lesser remedy." Harper v. Virginia Dept. of Taxation 113 S.Cts 510.

Thus the court must conclude that if an infraction is quasi criminal, it must also be quasi-civil, because an infraction complained as a criminal proceeding does not guarantee an individual the rights of the Constitution of the U.S. nor does it seek a punishment that one would think befits a criminal punishment such as imprisonment or substantial fine or both nor does the state allow the full use of the laws to defend criminal proceedings. Thus Ceritiorari should be granted to further review the nature of quasi proceeding concerning

their rights, use of the laws in quasi proceeding and limitations, if any and it's classification.

(b) There is the quasi status of the parent child relationship concerning the definition of age of majority in Idaho as18, I.C 32-101 and the definition of a minor in Idaho as 21. I.C. 23- 604.

Idaho Code 32-101 defines the age of majority of a person as 18 years of age. Idaho Code 23-604 also defines a minor as a person under the age of 21.

" The term minority does not imply any particular age limit. The term [simply] embraces the person who has not yet arrived at the age of majority prescribed by law, for minority is a status created by law and is subject to statutory limitations and exception." Allam v. State 830 P.2d 435, at 437

The Court of Appeals ruled that Bettwieser could not be assisted by her father Martin because she was 19 or past the age of majority. As cited in Richie, the court ruled that even thought there may not be a law allowing a parent to represent a child there is not one that disallows it either.

In L.A.M., 547 P.2d AT 832-34 the court held that parents and the state itself have a legitimate interest in protecting minors by preventing them from engaging in activities for which they are not physically, intellectually or emotionally prepared. The Idaho Supreme court has added a factor to consider to protect minors and that is [inexperience.]

They also held that there is no requirement that the same age of majority applies to all activities. They also define a parents rights for a child as; #5. The right to be supported by an adult.

"Purpose of statutes which designate age at which a young person legally becomes an adult is to protect minors from adverse consequences of their inexperience.
Harrinfield v. District Court of the Judicial District 95 Idaho 540, 511 P.2d 822 (1973)

It would appear that the terms minority and majority are creations of law and do not set a standard for competence or preparedness, or intellect or experience. Idaho allows a person to become an attorney at the age of 18 after qualifying with the rules that the State Supreme Court has set for schooling and experience. Under those rules a person would not qualify as and attorney until they were 24 years of age. Idaho Bar Rule 201. An 18 or 19 year old can not drink, rent a car, adopt children become President, carry a concealed weapon, qualify for a loan without a co-signer. Even when children are still going to school the laws still allows the parents a quasi jurisdiction over their children in allowing the children to be under their direction and assistance when it comes to financial and insurance needs, paper work etc. 38 USC 101(4)(A)(iii)

" There is no legal requirement that the same age of majority apply to all activities and circumstances." Allam v. State 830 P.2d 435 at 438

In this instance Bettwieser [sought] the assistance of her father, the court acknowledged that assistance as necessary or acceptable up until 1 week before trial. This court must also give more weight to the fact that Bettwieser sought the assistance of her father and not that her father was seeking jurisdictional enforcement to exercise a parental right, even though we argue that he does have one. The laws allow a child to be independent from their parents if they so choose but it they [seek] parental guidance and or help the States should not abridge that bond.

" An additional and more important justification for state deference to parental control over children is that the child is not the mere creature of the State: those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510 535 45 S.Ct 571, 573 69 L.Ed.. 1070(1925)

" this affirmative process of teaching, guiding and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens." Wisconsin v. Yoder 406 U.S. 205, 233(1972) ethical beliefs, religious or political beliefs is something we expect the state not to attempt in.

Should the courts deter parental involvement when the child seeks parental help?

" Under the Constitution, the State can properly conclude that parents and others, who have the primary responsibility for children's well being are entitled to the support of the laws designed to aid discharge of that responsibility." Ginsburg v. NewYork 390 U.S. at 639.

" constitutional interpretation has consistently recognized the parents claim to authority in their own house hold to direct the rearing of the children is basic in the structure of our society." Ginsberg v. NewYouk 390 U.S. at 639

If the State Courts had continued to allow Bettwieser to be represented by her father and recognized the U.S Constitutional and Statutory claim of the parent and child

relationship the case would have been decided differently. Certiorari should be granted to ensure that similar cases are not decided based on the Idaho Supreme Courts adoption of the Court of Appeals opinion No., 63, 2006 and that the quasi status of minor and adult or age of majority can be clarified.

(c) There is the quasi status of the statue itself allowing lay representation of a lay person to a proceeding so long as the "claim" is not more than $300. I.C. 3-104 and the quasi status of the word [claim] itself.

Idaho Code 3-104 allows lay representation to a proceeding by any party. Lay representation means a non-attorney, proceeding is a generic term for civil or criminal, and party is either the plaintiff or defendant.

"Every word to a document has independent meaning and that no word is unnecessarily used and needlessly added." Wright v. United States 302 U.S. 583, 588(1938)

The word "claim" is the only word the Court of Appeals focused on to base it's opinion and is narrowly evaluated.

Merrian-Webster Ditioanary 1996 defines a "claim" as a demand for something due or believed to be due."

Barrons Law Dictionary, Third Edition, 1991 defines it as an assertion of right to money or property.

All that the state can enforce is a claim for money as a penalty The money is retained by the state or claimed for punishment as a penalty.

The word " proceeding" is defined as the succession of events constituting the process by which judicial action s invoked and utilized 80 A. 2df 100, 102; the form in which actions are to be brought and defended, the manner of intervening in suits and of conducting them, the mode of deciding them, opposing them, and of executing judgments. 136 F. 2d 790, 791. It is thus broader in meaning than the term [action].

"Action" defines as a judicial proceeding whereby one party [prosecutes] another for a wrong done or protection of a right or prevention of a wrong See **penal action**.
Barrons Law Dictionary 1991.

"Penal Action" is defined as a civil suit brought for the recovery of a statutory penalty imposed as a punishment for an offense against the public. 92 S.W. 191, 212.

Thus an infraction must be a Penal Action or civil action even though the word "proceeding" is broader and covers criminal also. The statute uses the word "a" also which brings more ambiguity and a broader interpretation to the issue. Idaho Code 18-113 also cites a $300 dollar maximum punishment for misdemeanor offenses which is where the legislature acquired it's reasoning for the $300 claim in I.C. 3-104. Thus the statue is meant for both civil and criminal proceedings.

Thus, certiorari should be granted to bring clarity that the statute allows the representation of lay persons in an infraction because of it's quasi status and that an infraction is more civil than it is criminal and that the statute allows lay representation for both civil and criminal.

Other Issue:

Then there is the issue of constitutional fairness and the violation of due process through the course of the proceedings and should allow for a correction of the rulings to these particular proceedings of this particular case.

Constitutional Due Process is a fairness doctrine, fairness in applying or misapplying the rules and statues to the particular circumstance of an existing proceeding. Violating fairness produces prejudice of the cause against the injured party. The statutes and rules set the requirement for due process. It also address the issue of equal protection when it pits a pro-se litigant to an attorney and says the law is for attorney's and not pro-se citizens. The facts of this case support the constitutional violation of due process and equal protection.

The facts of this case are that Bettwieser issued and served a Power of Attorney to Martin to sign documents and appear in Bettwiesers' behalf, to the court and the state On March 5, 2004. Martin appeared for trial in behalf of Bettwieser and the state witness was not present.

The state did not object to Martin's appearances until June 1, 2004 when the state saw that they could be sanctioned for violation of the criminal rules of procedure and a court order.

That the court allowed Martin to appear and argue at 3 court proceedings and noted his presence as a representative on the courts minutes. The court sent notices and orders to Martin.

That the State moved for 4 trial continuances and the court allowed it. The State moved to find Martin in contempt of court so he would not continue to help his daughter.

The court did not find him in contempt but sanctioned them any way by striking the pleadings and not allowing Martin to represent Bettwieser any more.

The court sent Martin a Notice of Hearing for July 28, 2004which stated only that "this charge is a traffic infraction. Instead it was a hearing for contempt.

That the court did not issue and serve a written order of the contempt proceeding and only relied on the courts minutes for that order and told Bettwieser at trial that if she wanted the order she could order a copy of the transcript, which prejudices Bettwieser. Appendix 4

Trial was held one (1)week after dismissing Martin as Bettwieser's representative without notice to Bettwieser. Bettwieser is not required to attend hearings according to Idaho law and the Power of Attorney.

Bettwieser was only allowed a review of discovery materials at the trial it self The State was not sanctioned for any of it's actions.

That Bettwieser's discovery request sought to depose the complaining officer who was the basis for all of the trial continuances. The trial was extended beyond the statutory time limit for prosecuting the case.

"Although individual errors may not rise to level of constitution violation, collection of errors would. Davis .v. Woodford 384 F. 3d 628 (Cal) 2004

"Power of attorney has authority to act before any incapacity and is not only effective on incapacity." The Estate of Sylvia S. Swanson v. U.S. 2000 Brief of Appelle U.S.

"Power of attorney authorizes such applications." Leary v. U.S. 395 U.S. 6 89 S. Ct 1532

> " A party to an action will not be permitted to stand by and neglect or refuse to raise seasonable objections to mere defects in pleadings or proceedings and thereafter take advantage of such defects on appeal." H.P. Nobach v. J.T. Scott 20 Idaho 558

In fairness the Supreme also should seek review of the interpretation of the case law the Court of Appeals used to interpret it's decision. Specifically in one instance the court cited Kerns V. Morgan 11 Idaho 572 579, 83 P 954, 956(1905) stating "(stranger to the proceeding could not obtain order.)." The Court of Appeals used this phrase in order to justify the courts striking of the various pleadings and representation.

The facts of that case are that the party made himself a party by seeking an ex-parte order from the court without notice or due process to the other party and so the order was reversed.

Bettwieser's case does not fit the criteria of that case. In Bettwieser's case the Court and State were both aware of all the facts with the status of Martin and the power of attorney and of the proper filings and notices which were also sanctioned by the court and the state up until the last week. Martin never sought to make himself out as party but was requested by Bettwieser and sanctioned by the court and untimely objected to.

Additionally, as has been addressed, is the fact that the court did not find Martin in contempt, did not cite any violation of any rule or order and did not find that he acted in

bad faith but sanctioned Bettwieser any way. In this instance the Supreme Court of Idaho has strayed from its own precedence of this very issue. State of Idaho v. Goodbe Docket No. 31914, opinion No. 75 filed July28, 2006.

Granting certiorari would allow the court to bring unity to all the conflicting interpretations of law and would allow the opportunity for clarity and justice to the issues at hand.

CONCLUSION

The court must conclude that the petitioner has met the burden for the court to seek review of these matters because of the quasi- nature, the parental rights, constitutional issues, and of the legal reasoning and interpretation. There is a substantial amount of people that would benefit from the courts direction on these issues. Granting certiorari and ordering up the record for review would serve justice.

Respectfully submitted.

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IN THE COURT OF APPEALS OF THE
STATE OF IDAHO
Docket No. 32083

STATE OF IDAHO,	)	
Plaintiff-Respondent	)	2006 Opinion No. 63
v.	)	Filed September 7, 2006
MEGHAN BETTWIESER	)	Stephen W. Kenyon, Clerk
Defendant, Appellant,	)	
	)	

Appealed form the District Court of the Fourth Judicial District, State of Idaho, Ada County, Hon. D.Duff Mckee, District Judge: Hon. Thomas P. Watkins, Magistrate.[1]
Judgment of conviction for following to closely, affirmed.

Hon. Lawrence G. Wasden, Attorney General: Rebekah A. Cude, Deputy Attorney General, Boise, for respondent.

Lansing, Judge

Meghan Bettwieser appeals her conviction for committing the infraction of following to closely. Bettwieser principal contention is that the magistrate court erred in refusing to allow Bettwiesers father, a non-lawyer, to represent her in the proceedings. We affirm.

I.
FACTUAL & PROCEDURAL BACKGOUND

After she was involved in an automobile accident, Bettwieser, then a nineteen-year old college student, was issued a citation for the infraction of following too closely,

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[1] At least four different magistrates presided in court proceedings or otherwise took action in this case. Judge Watkins presided at the trial and entered judgement.

Idaho Code 49-638.[2] She plead not guilty and the matter was scheduled for a court trial on March 5, 2004. Bettwieser apparently had a college project due on that date and did not appear, but her father, Martin Bettwieser ("Martin"), was present. Rather than entering a default judgment against Bettwieser, the magistrate reset the trial for April 5, 2004.[3] The trial date was continued several more times at the States request because the officer who had issued the citation had bee seriously injured in the line of duty. The trial was ultimately set for August, 2004.

Before the matter came to trial, Martin signed and filed several motions and a request for discovery, purporting to act "for and on behalf of Meghan Bettwieser, acting in a pro-se manner." He also appeared at several hearings on behalf of the still absent Bettwieser. The State did not respond to the discovery request and Bettwieser signed and filed a motion for dismissal or other sanctions for the State's non-response. In the motion, Bettwieser stated " I have waived my write to have an attorney of law represent me and that I elected to handle the matter pro-se and that I have substituted my pro-se status to my father." The State was ordered to respond or object to the discovery but no sanctions were ordered. On June 1, 2004 the State complied by filing and objection that the discovery request was invalid because Martin was not a licensed attorney and there was no statutory authority

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2 The statute provides: " The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway."

3 We reject Bettwieser's contention that this first continuance was due to the State's actions. Although the officer was not able to testify on that day because of his injuries, the trial date was reset not because he was not absent, but because Bettwieser was not present. In the resetting the trial date, the court was being lenient and accommodating: it could have entered default for Bettwieser's failure to appear, thus relieving the State of the burden to present evidence. Idaho Infraction Rule 6(h), 8(b).

Permitting him to ac on his adult daughter's behalf. The State also asserted that the liscovery requests were outside thye scope of Idaho Criminal Rule 16. Later the State moved that Martin be required to shov cause why he should not be held in contempt for practicing law without a license.

At the hearing onJuly 28, 2004, the magisitrate declined to hold Martin in contenpt, but concluded that Martin could not represent Bettwieser n the proceedings. The magistrate further ordered that all the pleadings filed by Martin, including the request for discovery be stricken. A court trial was conducted on August 6, 2004. On that date, Bettwieser appeared for the first time and represeited herself. The magistrate found that she had committed the infraction of following too closely. Bettwieser appealed o the district court, which affirmed. She again appeals, contending that the magistrate erred in no permitting Martin tc continue to represent Bettwieser and is stricking the discovey request he filed. She also contends that she was deprived of due process because the magistrate delayed in making a decisio on matters until one week before trial. Lastly, she asserts tiat the trial evidence was insufficient to prove that she commtted the infraction.

II.
ANALYSIS

Where, as here thee have been an intermediate appeal to the district court, we base our review upon the record of the magistrate proceeding and render our decision independent of, but with due regard for the district court's decision. *State v. Croston, 124 Idaho 471, 472, 860 P.2d 674, 675 (Ct. App. 1993).*

A. Representation by Martin

Bettwieser's primary contention is that her father was her

lawful representative in the proceedings below and that the magistrate therefore erred in preventing him from representing Bettwieser at trial.

1. Lay representation under Idaho Code 3-104

Generally speaking, "a defendant in a criminal prosecution has no constitutional right to be represented at trial by a non-lawyer lay counsel," *State v. Brake, 110 Idaho 300, 301, 715 P.2d 970, 971(1986).* Bettwieser does not rely on the constitutional right to counsel, however, but upon the Idaho statute directed at preventing individuals from practicing law without a license, Idaho Code 3-104. The statute provides as follows, with the portion upon which Bettwieser relies italicized:

> If any person shall practice law or hold himself out as qualified to practice law in this state without having been admitted to practice therein by the Supreme Court and without having paid all license fees now or hereafter prescribed by law for the practice of law he is quilty of contempt both in the Supreme Court and district court for the district in which he shall so practice or hold himself our as qualified to practice. *Provided, that any person may appear and act in a magistrate's division of a district court as a representative of any party to a proceeding therein so long as the claim does not total mor than $300, and so long as he or his employer has no pecuniary interest in the outcome of the litigation, and that he shall do so without making a charge or collecting a fee therefor.*

This statute's prohibition against practicing law without a license unquestionably applies to representation of another in court proceedings and the drafting and filing of pleadings for another. *See Idaho State Bar v. Meservy, 80 Idaho 504, 508, 335 P.2d 62, 64 (1959); In re Mathews, 57 Idaho 75, 83, 62 P.2d 578, 581 (1936); State v. Wees 138 Idaho 119, 122, 58 P.3d 103, 106 (Ct.App. 2002).* Bettwieser contends, however, that her father's actions fall under the exception for claims of

$300 or less because infractions are punishable only by fines of up to $100, I.C. 18-111, 49-236(2). The heart of the issue, there fore is whether a bench trial for the traffic infraction of following to closely qualifies as a "claim."

The interpretation of the statute is an issue of law over which this Court exercises free review. *State v. Parker, 141 Idaho 775, 777, 118 P.3d 107, 109 (2005); State v. Yager, 139 Idaho 680, 689, 85 P.3d 656, 665 (2004).* If the statutory language is unambiguous, " the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction." *Garza v. State, 139 Idaho 533, 536, 82 P.3d 445, 448 (2003) (quoting Payette River Property Owners Ass'n v. Board of Comm'rs of Valley County, 132 Idaho 551, 557,976 P.2d 477,483 (1999).* Plain meaning of the statute therefore will prevail unless clearly expressed legislative intent I contrary or unless plain meaning lead to absurd results. *Garza, 139 Idaho at 536, 82 P.3d at 448.* Where the statute is ambiguous, we attempt to ascertain legislative intent, and in construing the statute we may examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute. *Kelso & Irwin, P.A. v. State Ins. Fund, 134 Idaho 130, 134 997 P.2d 591 595 (2000). See also Garza, 139 Idaho at 535-36, 82 P.3d at 447-48.*

Idaho appellate courts have never directly addressed the provisions of I.C. 3-104 that is in question here, although the statute was mentioned in passing fashion in *State v. Harrold, 113 Idaho 938, 939, 750 P.2d 959, 960 (Ct. App. 1988).* There, the defendant was charged with misdemeanor driving under the influence of alcohol and asked to be represented at trial by a lay person. This request was denied. On appeal this Court rejected a constitutional argument, and noted in aside that " although not rising to the level of a constitutional right, there appears to be a

statutory right under I.C. 3-104 to avail oneself of lay assistance in certain small claims actions." *Id. At 940 n.3, 750 P.2d at 961 n.3.*

This comment in *Harrold* was *dicta*, but we agree with it's interpretation that I.C. 3-104 permits representation by lay persons only in minor civil actions in which no more that $300 is at stake. The term "claim" as used in section 3-104 ordinarily refers to a civil claim for damages. That the legislature intended this provision to limited to civil matters appears to be confirmed by the history of the statute. Section 3-104 took its current form through an amendment in 1969. Before that amendment, the statute provided that "any person may appear and act in a *justice court* as representative of any party ot a proceeding therein...." (emphasis added.) The amendment was enacted the same year that justice of the peace courts were legislatively abolished and the magistrates division was created. *See* 1969 Idaho Sess. Laws, ch. 100-19, 121-28. It substituted "magistrate's division of a district court" for "justice court" and added the language limiting lay representation to proceedings where the claim totals no more than $300. 1969 Idaho Sess. Laws, ch 278 at 821-22. Significantly, the jurisdiction or the justice of the peace courts, where lay representation was thereto fore allowed, included both civil cases of less than $300, I.C. 1-1403 (superseded 1969), and certain misdemeanors, I.C. 1-1406 (superseded 1969). It appears that by amending the statute to allow lay representation only on "claims" not exceeding $300, the legislature consciously elected not to continue allowing lay representation in misdemeanor proceedings.

Although there is language in I.C. 49-110(5) defining "infraction" as a civil public offense,[4] traffic infractions are criminal in nature and are treated as criminal for both constitutional and statutory purposes. *State v. Lynch, 126 Idaho 388, 391, 883 P.2d 1080, 1083 (1994); State v. Bennion, 112 Idaho 32, 35, 730 P.2d 952, 955 (1986).*

The $100 penalty for commission of an infraction is a fine, and it cannot be said that when the State prosecutes an individual for a traffic infraction, it has brought a "claim" in the nature of a civil action for damages. If the legislature had intended to allow lay representation for criminal matters, it would not have used the word "claim" in the statute. We therefore hold that the exception in I.C. § 3-104 does not authorize representation by a lay person in infraction proceedings.[5]

2. Parental representation of a minor

Bettwieser also argues that the court should have permitted her father to represent her because she was a "minor." In *State v. Ritchie, 114 Idaho 528, 531, 57 P.2d 1247, 1250 (Ct. App. 1988),* we held that under certain circumstances, a minor could receive assistance in court from a non-attorney parent or guardian. This exception is inapplicable, however, because Bettwieser was nineteen years old when she was cited for the infraction.

[4] Idaho Code 49-110(5) states: "'Infraction' means a civil public offense, not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or right to court-appointed counsel, and which is punishable by only a penalty not exceeding one hundred dollars ($100) and no imprisonment."

[5] Bettwieser also argues that by giving Martin a-power of attorney, she empowered him to exercise her right to self-representation. She contends that I.C. § 15-5-501 permits this delegation of a personal right. That statute, however, is of no relevance. It merely prescribes words that must be used in a power of attorney to make it "durable," i.e., a power of attorney that is exercisable notwithstanding the principal's subsequent disability or incapacity. It does not delineate what powers may be exercised by virtue of a power of attorney. Bettwieser cites no authority for the proposition that one may, via a power of attorney, empower another to take
actions that are otherwise prohibited by statute, as I.C. § 3-104 prohibits the practice of law without a license. Therefore, we do not further address this argument. See State v. Zichko, 129

In Idaho, the age of majority is eighteen years, I.C. § 32-101, notwithstanding that I.C. §§ 23-603 and -604 set a higher age for the purchase and consumption of alcohol. Bettwieser's arguments regarding the policies of state agencies, health insurance companies and rental car dealers, and the imposition of certain age requirements for the holding of government office, have no bearing on the legal definition of "minor."

B. Order Striking Discovery

After determining that Martin could not lawfully represent Bettwieser, the magistrate struck the motions he had filed and the request for discovery. Bettwieser contends that this was in error. She first contends that the State waived its objections to the discovery request by failing to make a timely response. Idaho Criminal Rule 16(e)(l) requires that parties respond to discovery requests within fourteen days of service. The failure to timely serve a response constitutes a waiver of any objections to the request unless the court otherwise orders upon a showing of good cause or excusable neglect. I.C.R. 16(e)(2). The time limit of Rule 16(e)(l) arises, however, only when there has been a properly served request for discovery. We have held that Martin was not entitled to represent Bettwieser. Therefore, he could not properly sign and serve discovery requests on her behalf. He was not a party or the lawful representative of any party and thus did not have standing to file motions or discovery requests. *Kerns v. Morgan, 11 Idaho 572, 579, 83 P. 954, 956 (1905)* (stranger to the proceeding could not obtain an order). Accordingly, we conclude that the magistrate court did not err in implicitly finding good cause for the State's nonresponse or in striking the discovery requests.

Idaho 259, 263, 923 P.2d 966, 970(1996) (When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.).

C. Timeliness of Magistrate's Order Disallowing Representation by Martin

Although the magistrate court ultimately made the correct rulings, it did so only after allowing Martin to appear for Bettwieser on several occasions and delaying its decision about the discovery for many weeks. Bettwieser argues that she was unfairly prejudiced by the court's permissively allowing Martin to represent Bettwieser during most of the case, and then reversing this position one week before trial. We interpret this as an argument that her right to due process was violated because she did not have adequate time to prepare her defense.

Due process demands an opportunity to be heard "at a meaningful time and in a meaningful manner." *Gray v. Netherland, 518 U.S. 152, 182(1996).* Thus, due process is violated if the defendant is not afforded "a reasonable opportunity to meet [the charges] by way of defense or explanation." *In re Oliver*, 333 U.S. 257, 275 (1948). See also *State v. Montroy, 37 Idaho 684, 690, 217 P. 611, 614(1923)* (It is the public policy of this state, disclosed by constitutional guaranties as well as by numerous provisions of the statutes, to accord to every person accused of crime . . . every reasonable opportunity to prepare his defense and to vindicate his innocence upon a trial.). It is a necessary corollary that in order to muster a defense, the defendant must have sufficient time to do so.

Bettwieser contends that because the case went to trial only one week after Martin was removed from the case, she did not have adequate time to resubmit the discovery that Martin had filed or to prepare to represent herself at trial. After examining the timeline and the actions that Bettwieser chose to take or forego, however, we are not convinced that she was deprived of due process.

On June 1, 2004, several months before trial, the State responded to Martin's discovery request by objecting that it had not been submitted by a person who had standing to file anything in the case. Bettwieser could have easily cured this defect by resubmitting the discovery under her own name, but she did not do so. As early as May 13, 2004, the court suggested that it might not permit Martin to represent Bettwieser at trial, and she was therefore on notice of this possibility long before trial. Moreover, when Martin was barred from representing Bettwieser and the discovery he had filed was disallowed one week before trial, Bettwieser could have requested a continuance if she did not believe that she could prepare for trial in this amount of time. She made no such motion, and thus cannot now claim that a week was insufficient time for her to muster her defense.[6]

D. Sufficiency of the Evidence

Bettwieser also argues that the court erred in finding her guilty of following too closely. When a criminal action has been tried to a court sitting without a jury, appellate review of sufficiency of the evidence is limited to ascertaining whether there is substantial evidence upon which the court could have found that the prosecution met its burden of proving the essential elements of the crime beyond a reasonable doubt. *State v. Smith*, 139 Idaho 295, 298, 77 P.3d 984, 987 (Ct. App. 2003). When we review the record to determine whether substantial evidence exists we are precluded from substituting our judgment for that of the fact finder as to the credibility of witnesses, the weight of testimony, and the reasonable inferences to be drawn from the evidence. *State v. Vandenacre*, 131 Idaho 507, 510, 960 P.2d 190, 193 (Ct. App. 1998); State v. Hickman, 119 Idaho 366, 367, 806 P.2d 959, 960 (Ct. App. 1991). The State called one witness at trial, the driver of the car that Bettwieser struck. The witness testified that on a clear, dry

day, Bettwieser's car rear-ended his when he had to brake suddenly because the car in front of him stopped. The witness testified that as he approached the rear of the car in front of him, he felt the impact of Bettwieser's car from behind him. Like Bettwieser, the witness believed that he had been traveling at a safe distance, but that his reaction was not quick enough to avoid a collision. He also received acitation. This witness's testimony was sufficient to support the magistrate's finding that Bettwieser was following more closely than was reasonable and prudent under the circumstances.

III.
CONCLUSION

We find no merit in Bettwieser's various challenges to her conviction for following too closely. The judgment of conviction is therefore affirmed.

Chief Judge PERRY and Judge GUTIERREZ **CONCUR.**

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6 Bettwieser contends that she did not know that the motions and discovery request filed by Martin had been struck from the record until the day of trial. However, Bettwieser's failure to appear at the previous hearings in her own case, causing her alleged unawareness of these developments, is not an error of the State or the court. Contrary to Bettwieser's assertions, the court was not required to prepare and serve a formal written order expressing its ruling on the issue. She cites Idaho Rule of Civil Procedure 77(d), which is inapplicable. See instead I.C.R. 12(e) and (g), Idaho Infraction Rule I, and Misdemeanor Criminal Rule 1.

In the Court of Appeals of the State of Idaho

No. 32083

STATE OF IDAHO, Plaintiff-Respondent v. MEGHAN BETTWIESER Defendant-Appellant.	)	ORDER

The Court has received and reviewed the appellant's petition and brief for rehearing.
After due consideration, the petition is hereby DENIED.
IT IS SO ORDERED
DATED this 17th day of October, 2006.

/s/ [Illegible]

Chief Judge

/s/ [Illegible]

ATTEST: _____
Chief Deputy Clerk

cc: Counsel of Record

In the Supreme Court of the State of Idaho

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	ORDER DENYING
	)	PETITION FOR
	)	REVIEW
v.	)	
	)	NO. 32083
MEGHAN BETTWIESER,	)	Ref. No. 06R-225
	)	
Defendant-Appellant	)	

The Appellant having filed a PETITION FOR REVIEW on November 7, 2006 and a supporting BRIEF on December 5, 2006, seeking review of the Opinion of the Court of Appeals filed September 7, 2006; therefore, after due consideration,

IT IS HEREBY ORDERED that Appellant's PETITION FOR REVIEW be, and hereby is, DENIED.

DATED this 22nd day of January 2007.

By Order of the Supreme Court
/s/ Stephen W. Kenyon, Clerk

Stephen W. Kenyon, Clerk

cc: Counsel of Record
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Goller Publishing

ADA COUNTRY MAGISTRATE MINUTES

CJ3BMIN 7/26/2004
TCQUAIHJ 10:35:43

SCHEDULED EVENT:	JUDGE:	CLERK:
Hearing	Thomas Watkins	Holly Quaid

DATE: 07/28/2004 TIME: 15:30 COURT REPORTER: __
TAPE NO: _____ PR/AGY: BC PROS: K. Borger
~~P.D./ATTORNEY~~ Mr. Bettwieser

BETTWIESER MEGHAN E T0363456.01 SSN
DOB 07/01/1984 1 Following S 49 638 I

162815 Case Called Def: Father Present ☐ Not Pres.

___ In Custody	___ Advised of Rights
___ Waived Rts	___ PD Appointed
___ Waived Atty	___ Guilty Plea/PV Admit
___ N/G Plea	___ Advise Subsqt Penalty
___ Bond $_____	___ ROR
___ Pay/Stay	___ Payment Agr

/s/
#1 Statement & request to hold Mr. Bettwieser in contempt.

#2 Argument
Court decides:

* Does no hold Mr. Bettwieser in contempt.
* Orders Mr. Bettwieser to not represent daughter.
* Leave on for court trial.

1664421

Finish ( ) Release Defendant
War# T0363496 Def# 01 Seq# 01 Type F Docket#